

INDIANA DEPARTMENT OF STATE REVENUE

REVENUE RULING #2003-01 URT

November 24, 2003

Notice: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Utility Receipts Tax – Application of Utility Receipts Tax to Interstate and International Land-Line Telecommunications Services

Authority: IC 6-2.3-1-4, IC 6-2.3-1-13&14, IC 6-2.3-4-2, The United States Constitution, Central Greyhound Lines, Inc. v. Mealey, Okalahoma Tax Commission v. Jefferson Lines, Inc.

The taxpayer requests the Department to rule on the application of utility receipts tax to interstate and international land-line telecommunication services. The term "land-line telecommunication services", as used herein, refers to telecommunications by wire, cable, fiber optics or similar facilities. The taxpayer does not seek a ruling with respect to cellular or wireless services.

STATEMENT OF FACTS

The term "taxpayer", as used herein, refers to a corporation and its related entities, including without limitation an Indiana general partnership. The taxpayer provides, among other goods and services, interstate and international land-line telecommunication services.

DISCUSSION

IC 6-2.3-1-4 imposes utility receipts tax, hereinafter "URT", on the "the retail sale of utility services. . ." "Utility service" includes the furnishing of "telecommunications services", which are defined as the "transmission of messages or information by or using wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities." IC 6-2.3-1-13,-14.

IC 6-2.3-4-2 states:

Gross receipts derived from business conducted in commerce between Indiana and either another state or territory or a foreign country are exempt from utility receipts tax to the extent the state is prohibited from taxing the gross receipts by the Constitution of the United States.

The taxpayer believes that because of the nature of the URT and the absence of an apportionment provision in the URT, the imposition of URT on receipts from land-line interstate or international telecommunication services is prohibited under the Commerce Clause of the United States Constitution (U.S. Const., Art. 1, & 8) and therefore such services are exempt from tax under IC 6-2.3-4-2.

The URT is imposed on gross receipts from a utility's activities, not on the consumer of utility services. It is not imposed on consumption, but a tax on the business of furnishing utility services.

In support of the belief that the imposition of URT on receipts from land-line interstate and international telecommunication services is prohibited under the Commerce Clause of the United States Constitution the taxpayer offers certain court decisions. In 1948, the United States Supreme Court in Central Greyhound Lines, Inc. v. Mealey, 334 U.S. 653, 68 S. Ct. 1260 (1948), struck down New York's gross receipts tax on utility services as applied to receipts from interstate bus service. The State of New York sought to tax the total unapportioned receipts from New York sales of interstate transportation services, even though almost half of the mileage was in New Jersey and Pennsylvania. The Supreme Court held that, by its very nature, "an unapportioned gross receipts tax makes interstate transportation bear more than a fair share of the cost of the local government whose protection it enjoys."

The taxpayer summarizes that the New York utility receipts tax violated the Commerce Clause because it tried to tax more than the portion of the revenues of the interstate activities which reasonably reflected the in-state (New York) components of the activity being taxed.

The taxpayer, also, offers Oklahoma Tax Commission v. Jefferson Lines, Inc., 514 U.S. 175, 115 S.Ct 1331 (1995), that reaffirmed the holding in Central Greyhound. The United States Supreme Court noted that in the case of gross receipts taxes on the seller – as opposed to a sales tax on the consumer – an unapportioned tax on interstate services remains unconstitutional.

The taxpayer states that Jefferson Lines and Central Greyhound dictate that once a tax has been identified as a gross receipts tax on an interstate business activity, the tax base must be apportioned to reflect interstate activities.

Upon review of the information submitted by the taxpayer, the Department concurs with the taxpayer's belief that the imposition of URT on receipts from interstate and international land-line telecommunication services originating or terminating in Indiana is

prohibited by the Commerce Clause of the United States Constitution and, hence, under IC 6-2.3-4-2 receipts from such interstate and international telecommunication services are exempt from URT.

RULING

The Department rules that the taxpayer and its related entities, including without limitation the Indiana general partnership, are not liable for Indiana utility receipts tax on their receipts from furnishing interstate or international land-line telecommunication services.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection

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